

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
LARRY D. VAUGHT, JUDGE

DIVISION IV

CA06-467

February 14, 2007

MULTISTATE HOLDINGS

APPELLANT

APPEAL FROM THE UNION  
COUNTY CIRCUIT COURT  
[CV-2004-0437-6]

V.

BEALL-LADYMON CORP., PALAIS  
ROYAL, INC. and SPECIALTY  
RETAILERS (TX) LP

APPELLEES

HON. DAVID F. GUTHRIE, CIRCUIT  
JUDGE

AFFIRMED

Appellant Multistate Holdings is the owner of the Mellor Park Mall, a shopping mall in El Dorado, Arkansas. Appellee Specialty Retailers<sup>1</sup> leases space from Multistate Holdings to operate a “Stage” apparel store in the mall. A dispute arose as to the terms of the lease agreement, and the trial court disposed of the matter by granting summary judgment to Specialty Retailers. Multistate Holdings argues on appeal that because the lease presented an ambiguity, thereby establishing a fact question, the trial court erred in its summary disposal of the case. We see no error and affirm.

This dispute began when Specialty Retailers notified Multistate Holdings of its intention to make alterations to the leased property where it operated its Stage store. The mall

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<sup>1</sup>Appellees Beall-Ladymon Corp.; Palais Royal, Inc.; and Specialty Retailers (TX) LP are referred to collectively as “Specialty Retailers.”

configuration was such that Stage had one entrance from the outside parking lot to its store and one interior entrance from the main hallway of the mall. The management of Specialty Retailers determined that certain improvements to the Stage store—which included closing the entrance to the interior of the mall—would increase its sales. Specialty Retailers notified Multistate Holdings of its intention to make the store modifications by letter dated May 6, 2002.

Multistate Holdings responded by letter on May 22, 2002, stating that permission to close the entrance to the mall was “denied.” Specialty Retailers responded, again by letter, dated June 6, 2002, that it was not *asking permission* to do what the lease *expressly permitted* the retailer to do. In support of its position, Specialty Retailers referenced the following lease provision:

Tenant shall be privileged, at its expense, to make such alterations and improvements to the herein demised premises at its option as are advantageous to the proper conduct of its business.

The parties had no further direct communication, and construction was commenced on August 26, 2002. The renovation was completed on October 24, 2002, at a cost to Specialty Retailers of \$186,820. Approximately two years later, Multistate Holdings filed suit asking for a mandatory injunction compelling Specialty Retailers to reestablish an entrance to the interior of the mall.

Specialty Retailers moved for summary judgment after citing the above cited lease

provision.<sup>2</sup> An affidavit of its vice president and senior counsel, Scott Woods, was attached and stated that the lease authorized such improvements if they were advantageous to the proper conduct of its business. He further noted that the management of Specialty Retailers “had determined that by making such improvements its sales would increase.” Specialty Retailers also attached excerpts from a deposition of Dr. Surendra Agarwal, president of Multistate Holdings, where he admitted that the lease provision did not prohibit Specialty Retailers from blocking the mall entrance. Multistate Holdings responded by generally denying the allegations in the motion for summary judgment. The trial court granted the motion, and it is from this decision that Multistate Holdings appeals.

Appellant urges us to reverse the grant of summary judgment arguing that the lease contains an ambiguity as to whether the alteration of the leased premises materially, adversely affected the demised property. Much of the remainder of Multistate Holdings’ brief is dedicated to an argument that Specialty Retailers committed what a jury “might” conclude is waste, thereby establishing a fact question. Specifically, Multistate Holdings argues that Specialty Retailers committed waste by spending \$186,820 on improvements that will revert to Multistate Holding’s benefit at the end of the lease.

The waste argument need not be considered. Specialty Retailers established a prima-facie case of entitlement to summary judgment based on the portion of the lease agreement that it introduced into evidence, which permitted alterations to the premises that were

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<sup>2</sup> This provision was the only portion of the lease mentioned by either party.

“advantageous to the proper conduct of its business,” coupled with the affidavit from Woods stating that Specialty Retailers believed that closing off its mall entrance would increase the store’s sales. Multistate Holdings was then required to move beyond the general denial of pleadings and meet proof with proof by showing that material issues of fact remain to be litigated. *See Mack v. Sutter*, \_\_ Ark. \_\_, \_\_ S.W.3d. \_\_ (April 27, 2006). Because Multistate Holdings offered no proof whatsoever but simply relied on allegations contained in its pleadings, the trial court correctly granted summary judgment in Specialty Retailers’ favor.

Affirmed.

PITTMAN, C.J., and GRIFFEN, J., agree.